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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,832	03/09/2004	Christopher Goode	SEDN/121CON	5683
56015 7590 01/23/2009 WALL & TONG, LLP/ SEDNA PATENT SERVICES, LLC 595 SHREWSBURY AVENUE SUITE 100 SHREWSBURY, NJ 07702			EXAMINER PENG, FRED H	
			ART UNIT 2426	PAPER NUMBER
			MAIL DATE 01/23/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,832	<b>Applicant(s)</b> GOODE, CHRISTOPHER	
	<b>Examiner</b> FRED PENG	<b>Art Unit</b> 2426	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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***Transitional After Final Practice***

1. Since this application is eligible for the transitional procedure of 37 CFR 1.129(a), and the fee set forth in 37 CFR 1.17(r) has been timely paid, the finality of the previous Office action is hereby withdrawn pursuant to 37 CFR 1.129(a). Applicant's Amendment after final submission after final filed on 12/30/2008 has been entered.

**DETAILED ACTION**

***Terminal Disclaimer***

2. The terminal disclaimer filed on 12/30/2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,718,552 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Response to Arguments***

3. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 1, "causing **substantially continuous** transmission of said first set..." as in Claim 1 is not definite; therefore fail to particularly point out and distinctly claim the subject matter as required by 35 U.S.C. 112, second paragraph.

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imajima et al (US 6,211,901).

Regarding Claim 1, Imajima discloses a method for increasing channel utilization in a video broadcast system (FIG.11), comprising:

receiving, at a head-end, a request for a video program from one of a plurality of subscriber stations (FIG.8; Col 6 lines 6-30);

determining, at said head-end, whether said requested video program is associated with one of a plurality of subsets of video channels, wherein said plurality of subsets of video channels comprises a first subset of video channels representing a first subset of video broadcast channels having a first subscriber viewership level greater than a threshold level (Col 6 lines 30-41; NVOD services when the video requests greater than the threshold), a second subset of video channels representing a second subset of video broadcast channels having a second subscriber viewership level less than said threshold level (Col 6 lines 30-41; FVOD services otherwise), and a third subset of video channels representing on-demand channels having a third subscriber viewership associated with video-on-demand (FVOD is video-on-demand);

causing substantially continuous transmission of said first subset of video broadcast channels from said head-end toward said plurality of subscriber stations (FIG.18, 8, 9; NVOD is substantially continuous transmission when there is enough subscriber stations);

causing transmission of said second subset of video broadcast channels from said head-end to said plurality of subscriber stations which also includes VOD channels.

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Imajima discloses as in the prior art that the transmission of VOD to the subscriber stations is based on the availability of the channels (FIG.1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include the transmission of VOD to the subscriber stations based on the availability of the channels to provide an added benefit of system flexibility to the limited resources.

Regarding Claims 2 and 3, Imajima further discloses collecting information from each of the corresponding subscriber stations regarding the frequency of channel usage and favorite channel selections and sending said collected information from said corresponding subscriber stations to a broadcast interconnect manager for managing broadcast channels (NVOD) and the narrowcast channels (FVOD) within a broadcast spectrum (Col 18 line 55 - Col 19 line 30).

Regarding Claim 9, Imajima further discloses transmitting said requested video program from said head-end to subscriber equipment associated with said request, via a transmission network characterized by a broadcast spectrum over which programs are transmitted to said plurality of subscriber stations (FIG.12; Col 10 lines 20-32).

Regarding Claim 11, Imajima further discloses said first subset of broadcast channels comprises high viewership of channels associated with said first subset, said second subset of broadcast channels comprises lower viewership of channels associated with said second subset, said method further comprising dynamically changing, at said head-end, broadcast channel association with said first and second subsets of broadcast channels in response to changes in subscriber viewership (Col 9 lines 3-14).

8. Claims 4-5, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imajima et al (US 6,211,901) in view of Rudrapatna et al (US 5,592,470).

Regarding Claim 4, Imajima is silent about updating said plurality of subscriber stations with broadcast channel availability in a form of a channel map.

In an analogous art, Rudrapatna discloses updating said plurality of subscriber stations with broadcast channel availability in a form of a channel map (FIG.3; Col 4 lines 26-31; Col 8 lines 15-20).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Imajima's system to include updating said plurality of subscriber stations with broadcast channel availability in a form of a channel map to keep track of available channels; therefore more efficient bandwidth management can be achieved.

Regarding Claim 5, Rudrapatna further discloses said updating said plurality of subscriber stations with broadcast channel availability comprises: associating program identity, channel frequency, program availability and analog/digital format for each broadcast channel (FIG.6; Col 8 lines 15-42, different encoding rates indicating digital format; Col 3 lines 40-42, menu driven user interface indicating program availability).

Regarding Claim 7, Rudrapatna further discloses sending a channel map modifier request to said subscriber station; adding a new channel to said channel map at said subscriber station in an instance said channel map modifier request comprises an add channel request (FIG.6; when a new service is added to a channel 607, the users are updated 615).

Regarding Claim 10, Imajima discloses a semi-static broadcast portion of channels (NVOD), and an on-demand broadcast portion of channels (FVOD), and a narrow-cast portion of channels (FVOD) but is not explicit about allocating a plurality of channel slots for each of said portions of channels.

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Rudrapatna further discloses allocating a plurality of channel slots for each of said portions of channels (FIG.3, items 303, 304, 305).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Imajima's system to include allocating a plurality of channel slots for each of said portions of channels to keep track of available channels; therefore more efficient bandwidth management can be achieved.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Imajima et al (US 6,211,901) and Rudrapatna et al (US 5,592,470) and further in view of Rao (US 5,940,738).

Regarding Claim 6, Rudrapatna discloses determining whether said requested channel is in said channel map; if so, tuning to said requested channel at each subscriber station (FIG.6, items 607, 615; Col 8 lines 13-20; a mapping table indicates available channels for user to select).

Rudrapatna is silent about if not in said channel map, adding said requested channel to said channel map in an instance where said requested channel is available from said head-end and tuning to said channel; and providing indicia that said requested channel is unavailable for viewing in an instance where said requested channel is unavailable.

In an analogous art, Rao discloses adding said requested channel to said channel map in an instance where said requested channel is available from said head-end and tuning to said channel (Col 19 lines 22-30, 52-60); and providing indicia that said requested channel is

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unavailable for viewing in an instance where said requested channel is unavailable (Col 21 lines 55-67).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the combined system of Rudrapatna and Imajima to include adding a new requested channel if available and indicating unavailable if it is not available, as taught by Rao to add the benefits of channel bandwidth usage efficiency to the system.

11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Imajima et al (US 6,211,901) and Rudrapatna et al (US 5,592,470) and further in view of Gordon et al (US 5,920,700).

Regarding Claim 8, Rudrapatna discloses determining channel use of a channel listed in said channel map modifier request in an instance said channel map modifier request comprises a delete channel request to delete said channel associated with said delete channel request (FIG.6, items 607, 615; when a channel is replaced by a new service Sj the old service Si is deleted from that channel).

Rudrapatna is silent about sending a channel in use response to said head-end in an instance a channel associated with said delete channel request is in use.

In an analogous art, Gordon discloses indication of an asset in use response to Operations in an instance an asset associated with said delete asset request is in use (Col 6 lines 30-39).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the combined system of Rudrapatna and Imajima to include a channel in use response to said head-end in an instance a channel associated with said delete channel request is in use, as taught by Gordon to provide a more user friendly interface system.



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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRED PENG whose telephone number is (571)270-1147. The examiner can normally be reached on Monday-Friday 09:00-18:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fhp

/VIVEK SRIVASTAVA/  
Supervisory Patent Examiner, Art Unit 2426